Turning now to the merits, the present invention seeks to provide a cooked sausage that will be perceived by consumers to be healthy to eat, and which comprises fewer calories than traditional meat sausages, as described at page 3, lines 7-10 of Applicants' specification. An acknowledged practice is to include a cultured dairy product (page 2, lines 1 and 14) as a filler in meat products to help achieve this goal. However, due to the acidic properties of cultured dairy products (yogurt), such a practice reduces the pH of the final meat product. This has been discovered by Applicants to be an undesirable consequence, as explained subsequently.

In order to provide a cooked sausage that is juicy and has a desirable texture, it has been discovered that it is advantageous to keep the pH of the mixture of meat emulsion and fermented milk product at about 5.5 pH or more (page 5, lines 8-12). If the pH of the mixture falls below about 5.5 towards the isoelectric point (generally 5.0-5.2 pH) of the meat, the water-retaining capacity of the meat has been discovered to be reduced, impairing the juiciness and texture of the final product (page 5, lines 12-16). This is not an issue when adding relatively minor proportions of cultured dairy products, as in the case of U.S. Patent No. 4,362,750 to Swartz (discussed subsequently). However, it is an issue when larger quantities (e.g., greater than about 10% by weight) of typically acidic cultured dairy products are added.

Accordingly, the problem that the present invention overcomes is the desire to add significant quantities (e.g., greater than about 10% by weight) of yogurt to a meat mixture to achieve a low calorie product per weight of meat, while keeping the pH of the final mixture above the isoelectric point of the meat, which Applicants have discovered retains the moisture of the cooked meat product. Applicants discovered that the solution to this problem is achieved through the use of mild yogurts with a pH of about 4.6 or more, and preferably about 4.8 or more (page 9, lines 2 and 3).

Accordingly, each of Applicants' pending claims recites:

(1) use of a fermented milk product having a pH of 4.6 or more; and

(2) a mixture of meat emulsion and milk product having a pH of about 5.5 or more.

In sharp contrast to Applicants' objective of retaining moisture, Swartz seeks to improve the taste of sausage by the inclusion in the sausage of a cultured dairy product, as explained at column 2, lines 38-42 of Swartz. By the use of the cultured dairy product as a flavoring material, the sausage is given an instant tangy flavor without the normal 12 to 24 hours of fermentation typically needed to accomplish the same result (column 2, lines 43-47). The amount of cultured dairy product added depends upon the desired flavor. However, Swartz teaches an amount of only 2% to 8% based on the weight of the meat, as described at column 5, lines 38-47. Examples 2 and 3 of Swartz teach the addition of a cultured dairy product in amounts of 4.5% and 3.3% respectively (column 7, lines 12 and 56).

As taught at column 4, lines 23-24, a final product pH within the range of 4.5 to 4.8 is desirable according to Swartz. In other words, Swartz adds yogurt strictly as a flavor enhancer, and the pH of the final product is taught to be below that of the isoelectric point of the meat. Swartz neither discloses nor suggests a pH of 5.5 or more for the final meat mixture as claimed by Applicants. Further, Applicants submit that Swartz's cultured dairy product parameters of 2%-8% weight and final product parameters of 4.5-4.8 pH teach away from the desirable parameters now discovered and claimed by Applicants.

Therefore, the present invention is clearly different from Swartz in that its main purpose is to provide a cooked sausage which comprises fewer calories than traditional meat sausages, while Swartz's main purpose is to enhance flavor with the addition of cultured dairy products. Swartz is silent with respect to an amount of mild yogurt of 10-40% weight and an overall pH of the final meat mixture of 5.5. Accordingly, Applicants believe that the present invention is new over Swartz.

Moreover, Swartz fails to recognize the problem outlined above, fails to suggest the addition of substantial proportions of cultured dairy product to comminuted meat for making a cooked sausage, and fails to

suggest the solution of controlling the pH and the amount of yogurt added such that the overall pH of the meat mixture remains at least about 5.5. Accordingly, Swartz fails to establish *prima facie* obviousness of Applicants' claimed invention because there is no cited suggestion or motivation in Swartz, or elsewhere, to go against the teaching of Swartz to arrive at Applicants' claimed pH parameters.

In fact, Swartz's proposed meat product teaches directly away from Applicants' claimed invention. Swartz explicitly teaches a low pH range of 4.5-4.8 while Applicants have discovered (despite the teachings of Swartz) that a higher pH of at least about 5.5 is desirable.

For the foregoing reasons, Applicants therefore submit that the present invention is also non-obviousness over Swartz.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the application is now in form for allowance. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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October 30, 2002

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